IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2007

CORAM:

THE HONOURABLE MR. JUSTICE S. MANIKUMAR

C.R.P.P.D.No.1380 of 2006

1.Shanmugham
2.Chakrapani ... Petitioners

Versus
1.Perumal
2.Chinnathambi
3.The District Collector,
Villupuram.
4.The Tahshildar,
Tindivanam. ... Respondents

Civil Revision Petition is filed against the fair and decretal order dated 6.12.2005 made in I.A.No.1527 of 2005 in O.S.No.75 of 2003 on the file of the Additional District Munsif, Tindivanam.

For Petitioners : Mr.V.Lakshminarayanan
For Respondents : Mr.C.H.Pandian for RR 1 and 2
Mrs.R.Shanthi Raghavan for RR 3 & 4 Government Advocate (C.S.)

O R D E R

Aggrieved by the fair and decretal order dated 6.12.2005 made in I.A.No.1527 of 2005 in O.S.No.75 of 2003 on the file of the Additional District Munsif, Tindivanam, the present Civil Revision Petition is filed.

2. Facts leading to the filing of this Civil Revision Petition are as follows :
The petitioners filed O.S.No.75 of 2003 on the file of the learned Additional District Munsif, Tindivanam for declaration that the suit property belongs to them and the patta given to the respondents 1 and 2, by the official respondents 3 and 4 is incorrect and for a consequential direction to the respondents to grant patta in their name. Pending suit, the petitioners filed an application in I.A.No.1527 of 2005, under Order 6 Rule 17 C.P.C. to amend the plaint, stating that the suit property situated at S.No.36/2 measuring an extent of 1.94 hectares was purchased from Thiru.Selvaraj, Thiru.Govindaraj and Thiru.Veeramuthu on 3.2.1981 and from the date of purchase they are in possession and enjoyment of the entire suit property. At the time of filing the suit, the measurements of the suit property were wrongly mentioned due to inadvertence and as soon as they came to know about the mistake in the measurements, while comparing with the documents, they filed the present application to amend the plaint with correct measurements. They further contended that the amendment sought for by them would not alter the case and give raise to a new cause of action. It is their further contention that if the amendment is not allowed, it would cause serious prejudice to them. Per contra the respondents/defendants submitted stating that the suit properties were originally given survey number as S.No.296/2 with an extent of 10.78 acres and after sub-division, it was referred to as Survey Nos.296/2A, 296/2B, 296/2C. The said properties belong to the

government and therefore, the petitioners cannot seek for amendment of inclusion of the survey numbers in the plaint. The respondents have further contended that according to the petitioners the property situated in S.No.36/2 with an extent of 1.94 hectares, was purchased from Thiru.Selvaraj, Thiru.Govindaraj and Thiru.Veeramuthu on 3.2.1981 and from the date of purchase, they are in possession and enjoyment of the entire suit property. But in the plaint, they have stated that 0.28 Acres in S.No.36/2D alone were purchased by them and sought for declaration. The amendment sought for by the petitioners is contrary to the averments and hence the application for amendment is liable to be dismissed. They further submitted that if the petitioners are aggrieved over the dispute with respect to the property, they should have filed a rejoinder to the written statement with proper pleadings and they cannot seek for amendment of the plaint, by including the cause of action. It is the further case of the respondents that the application had been filed only with an intention to protract the proceedings and the same cannot be allowed to change the nature and cause of action.

3. On consideration of the materials and submissions of the contesting parties, the learned Additional District Munsif, Dindivanam dismissed the application for amendment holding that (i) the petitioners ought to have made averments in the plaint or by way of their replication statement and it is not appropriate to introduce a new case by way of amendment, (ii) Though suits in O.S.Nos.292 of 2002 and 65 of 2003 were taken up for joint trial along with the present suit, there is no progress for a long time, owing to the pendency of the application for amendment, and (iii) The petitioners ought to have filed the amendment petition before the commencement of trial, but they have not chosen to do so.

4. Aggrieved by the same, the petitioners have come forward with this civil revision petition.

5. Learned counsel appearing for the petitioners submitted that the petitioners have filed the above suit for declaration and for consequential directions. In the plaint, they have specifically stated that the suit property situated at S.No.36/2 measuring an extent of 1.94 hectares was purchased from Thiru.Selvaraj, Thiru.Govindaraj and Thiru.Veeramuthu on 3.2.1981 and from the date of the purchase, they are in possession and enjoyment of the entire suit property. But taking advantage of the measurements not clearly stated by the petitioners, the respondents have filed two separate suits contending inter alia that the first respondent in this revision petition, was granted patta in respect of the suit property. In this regard, the petitioners sent a notice on 10.12.2002 to the official respondents 3 and 4 to cancel the patta granted in favour of the first respondent. The respondents have not sent any reply. Learned counsel for the petitioners further submitted that at the time of filing of the suit, measurements were wrongly mentioned in the plaint and as soon as they came to know about the error, while comparing the documents, they had filed the petition to amend the plaint with correct measurements. He further contended that the amendment sought by the petitioners would not alter the nature and character of the case and give raise to a new cause of action. He further submitted that at any stage of the proceedings, amendment can be allowed and for the said preposition, placed reliance on a decision of the Supreme Court in Fritiz T.M.Clement and another vs. Sudhakaran Nadar and another reported in 2002 (1) CTC 695 and prayed that the impugned order be set aside.

6. On the other hand, the learned counsel appearing for the respondent would contend that the suit was filed for declaration and for a consequential relief of recovery of possession. As the plaintiffs are the authors of the suit, they should had the knowledge with regard to the suit properties. After filing the written statement and when the case is posted for trial, the plaintiff have resorted to amend the plaint by way of altering the nature and character of the case. He further contend that though at any stage of the proceedings, the amendment can be allowed, but in the case on hand, the petitioners have initiated the suit against the respondents for a declaration that patta given to the respondents

1 and 2 by the respondents 3 and 4 is illegal and also for a consequential direction to the respondents to grant patta in the name of the petitioners. In such circumstances, after commencement of the trial and against the pleadings of the respondents filed in the written statement, the petitioners should not be allowed to amend the plaint, which would alter the nature and character of the case and hence prayed for dismissal.

7. Heard the counsel appearing for the parties and perused the materials available on record.

8. Before proceeding with the facts of the case, let me extract few decisions of the Hon'ble Supreme Court on amendment.

9. In Fritiz T.M.Clement and another vs. Sudhakaran Nadar and another reported in 2002 (1) CTC 695, wherein the Supreme Court held as follows:
"6. In para 4(a) and 4(b) of which mention was made in the impugned judgment of the High Court, the alleged stipulation in the agreement regarding the rate and mode of payment of quarrying fee and path-way fee to the appellants and Enose Nadar, and the said Enose Nadar making construction on the mortorable road in October 1989 on his portion of land and thereafter the respondents using the portion of the B schedule road situated in the land of the appellants-plaintiffs and another Sukumaran Nadar and the payment being made to the appellants as well as to the said Sukumaran Nadar are mentioned. There is nothing in these two sub-paras which changes the basis and character of the suit. Nor can they have any prejudicial effect vis-a-vis the defendant of respondents. The other paragraphs added seem to be in elaboration of the appellants-plaintiffs' case based on the Agreement and the circumstances in which the Suit No.122/1992 was filed and the events in the aftermath of it which highlight the alleged unjustified refusal of respondents-defendants to pay the fee to the appellants-plaintiffs despite making use of the quarry and the path-way. Some of these averments may at best be considered unnecessary but do not tantamount to setting up a new case or cause of action. So also, the mere fact that in regard to quantification of the fee some changes are sought to be introduced while retaining the total amount claimed in the original plaint does not mean that the nature of relief claimed has undergone a material change. Therefore, the grounds of rejection of amendments are legally unjustified and based on non-application of mind to the exact nature of amendments. We reiterate that no prejudice could possibly be caused to the respondents. In fact, by reason of clarification and elaboration of the appellant-plaintiffs' claim before the trial has started, the respondents-defendants will be in a better position to know the exact case of the plaintiffs and proceed accordingly. On the other hand, it would result in miscarriage of justice if the amendment are not allowed and the appellants-plaintiffs are compelled to go to trial on the basis of an ill-drafted plaint with cryptic and inaccurate averments. However, we would like to record that in the course of arguments, the learned counsel for the appellants has fairly conceded that certain allegations in the proposed para 4(d) can be deleted as they are unnecessary for the purpose of the case."
10. In the case of S.Muthuraman (died) and others vs. Dhanaradja and 11 others reported in 1999 (II) CTS 250, this Court held as follows:
"3. In my considered opinion, there is no substance in rejecting the amendment application by the learned District Munsif on the ground that it creates a fresh cause of action, as it will not prevent or take away the right of revision petitioner/applicant to seek independent proceedings with regard to the additional items of the property, in which event, I am satisfied to permit the revision petitioner to amend the schedule mentioned property in order to avoid multiplicity of litigations, and therefore, I am obliged to set aside the order of the learned II Additional District Munsif, Pondicherry dated 22.11.1993 in I.A.No.3880 of 1993 in O.S.No.706 of 1991."

11. In B.K.Narayana Pillai vs. Parameswaran Pillai and another reported in (2000) I SCC 712, the Supreme Court, at Paragraph 3, held as follows:

"3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation."

12. In B.K.Narayana Pillai's case (cited supra), the Supreme Court extracted the decisions in A.K.Gupta & Sons Ltd. v. Damodar Valley Corpn., reported in AIR 1967 SC 96, Ganga Bai v. Vijay Kumar reported in 1974 (2) SCC 393 and Ganesh Trading Co., vs. Moji Ram reported in 1978 (2) SCC 91 and it is as follows:
"4. This Court in A.K. Gupta & Sons Ltd. v. Damodar Valley Corpn. Held:
□The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred: Weldon v. Neal2. But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation: See Charan Das v. Amir Khan3 and L.J. Leach and Co. Ltd. v. Jardine Skinner and Co.
The principal reasons that have led to the rule last mentioned are, first, that the object of courts and rules of procedure is to decide the rights of the parties and not to punish them for their mistakes (Cropper v. Smith) and secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended (Kisandas Rupchand v. Rachappa Vithoba Shilwant approved in Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil).
The expression □cause of action□ in the present context does not mean □every fact which it is material to be proved to entitle the plaintiff to succeed□ as was said in Cooke v. Gill in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in Robinson v. Unicos Property Corpn. Ltd. and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words □new case□ have been understood to mean □new set of ideas□: Dornan v. J.W. Ellis and Co. Ltd.10 This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time.□
Again in Ganga Bai v. Vijay Kumar this Court held: (SCC p.399, para 22)
□The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the court.□
In Ganesh Trading Co. v. Moji Ram it was held: (SCC p.93, para 4)
□4. It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to

the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.

` 13. It is well settled law that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that inspite diligence the party could not have raised the matter before the commencement of trial. The findings of the trial court is that the petitioner ought not to have filed a replication statement with regard to objections filed by the defendants in the written statement, but not an amendment to the plaint. There is no dispute that in regard to the suit property, two other suits are also pending and in those suits also, the boundaries are not clearly mentioned. In such circumstances the amendments sought to be made, may be necessary for the purpose of deciding the real question in controversy between the parties and at the same time, it would not alter the nature and character of the suit. Parties can very well lead evidence to substantiate their case. Subsequent knowledge of the petitioners with respect to the extent and measurements of the disputed parties, can be allowed by way of amendment the plaint and it would not affect the rights of the respondents. It is also well settled law that delay is not criteria to reject the amendment of the pleadings. Therefore, to meet the ends of justice, this Court is of the view that amendment of pleadings to substitute the relief sought for in the suit, would not cause prejudice to the respondents, when they can prove their title or possession over the disputed property, by letting in evidence. The judgments relied on by the learned counsel for the petitioners also support their case. The reasons adduced by the petitioners are also acceptable, though the trial has began in the present suit.

14. In view of the above, the order of the lower court is set aside and this civil revision petition is allowed. No costs. Consequently the connected M.P.No.1 of 2007 is closed.

04.10.2007

Internet :Yes/No
Index :Yes/No

vk

To

The Additional District Munsif,
Tindivanam.

S. MANIKUMAR, J.

skm

CRP.PD.No.1380 of 2006

04.10.2007

To
THE HONOURABLE MR.JUSTICE S.MANIKUMAR
ORDER in

Most Respectfully submitted.
By
vk/p.a.